

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DAVID P. VANDAMENT,

Plaintiff,

V.

COMMANDER MARK DUNCAN, *et al.*,

## Defendants.

CASE NO. C08-5522RJB/JKA

## ORDER ADOPTING REPORT AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of the Honorable J. Kelly Arnold, United States Magistrate Judge. Dkt. 5. The Court has reviewed the report and recommendation, Plaintiff's objections to the report and recommendation, and the remainder of the file herein.

Plaintiff filed a motion for leave to proceed *in forma pauperis* (Dkt. 1) on August 22, 2008. Magistrate Judge Arnold granted that motion on September 8, 2008. Dkt. 3. Plaintiff also filed a “Civil Rights Complaint Under 42 U.S.C. § 1983” (Dkt. 4) on September 8, 2008. In his complaint, Plaintiff raises seven claims alleging various violations of his constitutional rights.

Magistrate Judge Arnold issued his Report and Recommendation (Dkt. 5) on September 8, 2008. In the report and recommendation, Magistrate Judge Arnold correctly concluded that Plaintiff's 42 U.S.C. § 1983 action is a collateral attack on several underpinnings of the Plaintiff's criminal conviction. Judge Arnold noted, "When an incarcerated person is challenging the very fact or duration of his physical imprisonment, and the relief he seeks will determine that he is or

1 was entitled to immediate release or a speedier release from that imprisonment, his sole federal  
2 remedy is a writ of habeas corpus.” Dkt. 5, at 3 (citing *Preiser v. Rodriguez*, 411 U.S. 475, 500  
3 (1973)). Judge Arnold further noted, “[e]ven a prisoner who has fully exhausted available state  
4 remedies has no cause of action under § 1983 unless and until the conviction or sentence is  
5 reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus.” Dkt. 5, at  
6 3 (citing *Heck v. Humphrey*, 512 U.S. 477, 487 (1994)).

7 Plaintiff filed his objections to the report and recommendation (Dkt. 6) on September 22,  
8 2008. In his objections, Plaintiff notes that he is currently involved in an appeal contesting the  
9 denial of his motion in Superior Court to withdraw his guilty plea. Plaintiff requests that the  
10 Court reject Judge Arnold’s recommendation to dismiss the action, and Plaintiff asks the Court  
11 for leave to amend claims one, five, six, and seven of his complaint.

12 The Court, having reviewed the file and pertinent documents, concurs with the reasoning,  
13 findings, and conclusions of Judge Arnold’s report and recommendation. The issues that Plaintiff  
14 raised in his objections were thoroughly addressed and properly analyzed in Judge Arnold’s report  
15 and recommendation. Given that the deficiencies in Plaintiff’s complaint are not amenable to cure  
16 by amendment, Plaintiff’s request for leave to amend his claims should be denied.

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18 Therefore, the Court does hereby find and **ORDER**:

19 (1) The Court adopts the Report and Recommendation (Dkt. 5);  
20 (2) Plaintiff’s Complaint (Dkt. 4) is **DISMISSED WITHOUT PREJUDICE**; and  
21 (3) The Clerk is directed to send copies of this Order to Plaintiff, counsel for  
22 Defendants, and to the Hon. J. Kelly Arnold.

23 DATED this 15<sup>th</sup> day of October, 2008.

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26 ROBERT J. BRYAN  
27 United States District Judge  
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